

**COMMONWEALTH of VIRGINIA TREASURY BOARD
GUIDELINES FOR REGIONAL JAIL PROJECTS REIMBURSEMENT**

Issue Date: February 19, 1998

(These guidelines amend and supersede the
guidelines adopted March 16, 1994 and amended
October 19, 1994.)

STATUTORY AUTHORITY: *'' 53.1-80 through 53.1-82 of the Code of Virginia of 1950
as amended.*

SUMMARY:

The Guidelines are issued pursuant to § 53.1-82.2 of the Code of Virginia of 1950, as amended (the "Code"), which was created during the 1993 Session of the General Assembly to establish a method of reimbursement for a portion of the capital costs of a jail project, made pursuant to Code §§ 53.1-80, 53.1-81 or 53.1-82. Code § 53.1-82.2 allows the General Assembly, upon recommendation from the Department of Planning and Budget, to determine whether to reimburse one or more localities or a regional jail authority or other combination of localities, either in two lump sum payments, over time through a contractual arrangement between the localities or authority, and the Treasury Board or in one lump sum payment to be made upon completion of the project by the Virginia Public Building Authority (the "VPBA") pursuant to Section 2.1-234.13 of the Code. The Code amendments were a result of recognition that the Commonwealth would be unable to reimburse all local governments on a lump sum basis for a portion of their capital costs due to the large number of approved jail facilities for which reimbursement would soon be sought. The provision for reimbursement through the VPBA was enacted by the 1996 Session of the General Assembly and resulted in the subsequent approval of reimbursements through the VPBA.

The Treasury Board's duties as described in Code §§ 53.1-82.2 and 53.1-82.3, are to determine the amount of reimbursable financing costs and calculate the periodic reimbursement installment amounts (the "Treasury Board Regional Jail Financing Program"). Code §§ 53.1-80 through 53.1-82.3 describe the procedures which localities and regional jail authorities must follow in order to request reimbursement. These Guidelines describe the method by which the Treasury Board will calculate the reimbursement installment amounts to be set forth in a Reimbursement Agreement. These Guidelines are also intended to aid localities and regional jail authorities in structuring and issuing debt or other obligations to finance their jail facilities. These provisions are Guidelines only and are not intended to have the force and effect of law.

Attached as Appendix A hereto is an application form to be completed and submitted pursuant to Code § 53.1-82.3 by any locality or regional jail authority seeking reimbursement pursuant to Code §§ 53.1-80, 53.1-81 or 53.1-82.

PART I - GENERAL

1.1 Definitions: Capitalized and non-capitalized terms used herein which are not hereinafter defined shall have definitions as assigned in the Municipal Securities Rulemaking Board's Glossary of Municipal Securities Terms, or Code §§ 53.1-80 through 53.1-82.

Bond Rating. The assessment, typically by a nationally recognized rating agency, of the willingness and ability of an issuer to pay debt service in full and on time for a specific bond issue or obligation.

Capital Costs. Capital costs as described in Code § 53.1-82.2(D), include, but are not limited to, actual construction costs, costs of land acquisition, if the land purchased is used exclusively for siting a jail facility, architectural and engineering fees, and fixed equipment. These costs do not include administrative costs nor a financial advisor's, an investment banker's or attorney's fees incurred by local governments or, except in the case of minimum security facilities, loose equipment or furnishings. The amount of approved capital costs is determined by the Commonwealth Board of Corrections.

Capitalized Interest Fund. A fund in which a portion of the proceeds of an issue are set aside to pay interest on the securities for a specified period of time. Interest is commonly capitalized for the construction period of a revenue-producing project. In an accounting sense capitalized interest is the interest expense paid during the construction period (net of income earned on construction funds) which is added to the book value of the asset being built.

Certificates of Participation (COPs). A long-term contractual obligation which is usually not legally considered debt, in which investors purchase the right to receive a proportionate share of lease payments made by a lessee to a lessor under a capital lease for certain property. Lease payments are subject to appropriation.

Construction Fund. A fund into which bond proceeds are deposited and withdrawn to pay construction costs. Interest earnings on the construction fund often are applied to construction costs to reduce the size of a securities issue. Any moneys remaining in the construction fund after the completion of the project are used to pay debt service requirements.

Corrections' Standards. The Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities promulgated and issued by the Board of Corrections as may be amended or revised from time to time.

Debt Service Reserve Fund. The fund into which moneys are placed which may be used to pay debt service if pledged revenues are insufficient to satisfy the debt service requirements. The debt service reserve fund may be entirely funded with bond proceeds, or it may only be partly funded at the time of the issuance and allowed to reach its full funding requirement over time, due to the accumulation of pledged revenues. If the debt service reserve fund is used in whole or part to pay debt service, the issuer usually is required to replenish the funds from the first available funds or revenues. A typical reserve requirement might be the maximum aggregate

annual debt service requirement for any year remaining until the bonds reach maturity. The size of the reserve fund, and the manner in which it is invested, may be subject to arbitrage regulations.

Financing Costs. Financing costs, as described in Code § 53.1-82.2(E), are the total of all costs incurred by the regional authority, locality or combination of localities as are deemed reasonable and necessary by the Commonwealth Treasury Board to execute the financing of the Commonwealth's payment of capital costs and to fund such funds and accounts as the Treasury Board determines to be reasonable and necessary.

Reimbursement Agreement. The contractual agreement described in Code § 53.1-82.2(A)(2) entered into by the Treasury Board and approved by the Governor, on behalf of the Commonwealth, and the regional jail authority, locality or combination of localities undertaking a jail project. Such Agreement will contain a schedule of the reimbursement installment amounts calculated pursuant to Code § 53.1-82.2 and these Guidelines.

Security. Any note, bond, certificate of participation (COP), debenture, investment contract or financial instrument issued by an authority or locality for the purpose of financing a jail facility or a portion of a jail facility.

SNAP. Commonwealth of Virginia State Non-Arbitrage Program. SNAP includes a professionally managed money market mutual fund which provides issuers with a convenient method of pooling bond proceeds for temporary investment pending their expenditure and with record keeping, depository and arbitrage rebate calculation services.

- 1.2 Requirements:** Reimbursement installment amounts will be calculated pursuant to the parameters and requirements set forth herein. The Treasury Board, in its sole discretion, may deviate from the aforementioned parameters and requirements if the Board determines that conditions warrant such action.
- 1.3 Professional Staff:** The Department of the Treasury provides staff support to the Treasury Board. In addition, the Treasury Board may secure the services of a Special Counsel and a Financial Advisor to assist it in the performance of its duties under the Regional Jail Financing Program.
- 1.4 Expenses:** All expenses incurred by the Treasury Board, including those of Special Counsel and Financial Advisor, relating to processing a specific reimbursement request submitted by a regional jail authority, locality or combination of localities undertaking a jail project, shall be paid by the requesting localities or authority. Expenses include, but are not limited to, fees and expenses of the Financial Advisor relating to calculation of reimbursement installment amounts and fees and expenses of the Special Counsel and Financial Advisor relating to executing the Reimbursement Agreement. Expenses may be paid up-front by the requesting localities or authority or may be deducted from amounts reimbursed by Treasury Board.

PART II - THE REIMBURSEMENT APPLICATION

- 2.1 Description of the Application:** Attached as Appendix A to these Guidelines is the Treasury Board's Amortized Reimbursement Funding Request application. The purpose of this application is to obtain certain general information concerning localities' requests for amortized reimbursement funding for approved local or regional jail projects as described in Code 53.1-82.3. Information provided in the application will be utilized by the Treasury Board and the Department of Planning and Budget in evaluating requests and preparing recommendations for funding such projects.
- 2.2 Application Submission Dates:** Applications are to be submitted to the Governor on the dates described in Code 53.1-82.3 for localities or authorities requesting reimbursement for jail projects.
- 2.3 Application Package:** A regional jail authority, a locality or a combination of localities undertaking a jail project must submit a complete application package to the Governor in care of the Department of the Treasury. The application package should contain the completed Amortized Reimbursement Funding Request, a form of which is attached as Appendix A, and other information, correspondence and documentation described therein.
- 2.4 Amendments to the Application:** Any necessary amendments shall be made as soon as possible after the original submission. Material changes or submission of documentation required to complete an application must occur prior to the first day of the month of October immediately following the date the application was submitted.

PART III - CALCULATION OF AMORTIZED REIMBURSEMENT INSTALLMENT AMOUNTS

After a regional jail authority, locality or a combination of localities seeking state assistance submits an application to the Governor in care of the Treasury Board in accordance with the schedule set forth in Code 53.1-82.3, the Treasury Board will review such application and await notification from the Department of Corrections as to the amount of approved Capital Costs. The approved amount of reimbursable Capital Costs determined in accordance with Corrections' Standards and the Code will be used as the base amount in calculating the reimbursement installment amounts.

The Commonwealth will reimburse a portion of the Financing Costs incurred by the locality, localities or regional jail authority or other combination of localities on a case by case basis within the parameters set forth below.

- 3.1 Jail Projects Financed by Securities Issuance:** If a regional jail authority, locality or combination of localities issues securities to finance its obligation relating to a jail project, reimbursement installment amounts will be calculated within the following parameters:

- (1) The Treasury Board will analyze the terms and structure of the relevant securities issued to finance the jail project. The terms and structure of the calculation of the reimbursement installment amounts will parallel the terms and structure of such securities, to the extent deemed reasonable and necessary pursuant to Code § 53.1-82.2. The actual coupon rates and yields achieved by the locality or authority upon sale of its securities will be used to calculate the reimbursement installment amounts.

If a regional jail authority issues securities to finance a jail facility and the Reimbursement Agreement is executed by the regional jail authority on behalf of its members, the coupon rates and yields on the authority's securities will be used to calculate the reimbursement installment amounts. Accordingly, the terms and structure of the authority's securities will be reviewed to determine other Financing Costs.

If a single local government, political subdivision thereof, or any combination of local governments issues securities to finance a jail facility and the Reimbursement Agreement is executed by a local government on behalf of itself or any other combination of local governments, the coupon rates and yields of the locality's securities will be used to calculate the reimbursement installment amounts. Nothing in these Guidelines is intended to prevent the execution of a Reimbursement Agreement in conjunction with the sale of COP's. Accordingly, the terms and structure of the locality's securities will be reviewed to determine other Financing Costs.

- (2) The approved portion of Capital Costs and Financing Costs will be amortized at the Treasury Board's option over a period not to exceed twenty (20) years for the purpose of calculating the reimbursement installment amounts. The Treasury Board, in its sole discretion, may recommend a period in excess of twenty (20) years if amortizing reimbursement over such extended period benefits the Commonwealth.
- (3) Pursuant to the Code, the Commonwealth will reimburse a portion of the approved Capital Costs as determined by the Board of Corrections. The Board of Corrections may approve all or a portion of costs associated with separate portions or phases of a jail project. Different securities may be issued to finance separate portions or phases of a jail project. Accordingly, only those Financing Costs associated with the securities issued to finance approved Capital Costs or portions thereof, will be utilized by the Treasury Board in calculating the reimbursement installment amounts.
- (4) The closing costs and issuance costs which qualify as Financing Costs will be only those which relate to the issuance and sale of the securities. Any costs associated with the formation, approval and adoption of any agreement among participating localities relating to the formation of an authority or any contractual corrections agreement; and other costs which do not relate to the issuance of the securities will not qualify as Financing Costs.
- (5) The entire amount of the gross spread will qualify as a Financing Cost if the locality's or

authority's securities are sold on a competitive basis. If such securities are sold on a negotiated basis, the Treasury Board in consultation with the Financial Advisor will determine the amount of such spread which will qualify as a Financing Cost. In a typical negotiated sale, the gross spread, or underwriters' compensation, will consist of four components: takedown; management fee; expenses and underwriting fee (risk). If the spread includes clearance fees or underwriter's risk, such costs will in most cases not qualify as Financing Costs. The Treasury Board, in consultation with the Financial Advisor, will analyze each of these components as they relate to the circumstances surrounding each individual issue to determine the amount of eligible Financing Costs to be reimbursed by the Commonwealth.

- (6) If the securities structure includes a reasonable and necessary Debt Service Reserve Fund ("DSRF") and that fund qualifies as a Financing Cost, a proportional DSRF will be included in the calculation of the reimbursement installment amounts. In cases where debt service is subject to annual appropriation, a DSRF will qualify as a Financing Cost. The calculation of the reimbursement installment amounts will incorporate an estimate of the earnings rate on the DSRF over the duration of the amortization period. In the event the DSRF is invested for a term equal to the final maturity of the securities, the Commonwealth will use the rate obtained by the regional jail authority, locality or combination of localities on its own DSRF. In the event the DSRF is invested for a shorter duration than the final maturity of the securities, the Commonwealth will use the lower of the a) arbitrage yield limit of the securities or b) current market rates for permissible investments pursuant to the governing indenture or resolution under which the securities were issued.
- (7) If the securities structure includes a Capitalized Interest Fund, or other similar fund, such fund will in most cases not qualify as a Financing Cost. If such fund does qualify as a Financing Cost, a proportional fund will be included in the calculation of the reimbursement installment amounts.
- (8) If the securities structure includes a Construction Fund, or other similar fund, into which the proceeds of the securities will be deposited and if the size of the securities offering was adjusted for expected earnings on proceeds held in such fund ("Net Funded Construction Fund"), the calculation of the reimbursement installment amounts shall be similarly adjusted. The reimbursement installment amounts will be calculated based on a Net Funded Construction Fund using the estimated draw schedule furnished by the regional jail authority, locality or combination of localities, and an interest rate equal to the average return on the short-term SNAP portfolio for the latest month ending at least fifteen days prior to the date of the Reimbursement Agreement. In the event the Construction Fund is invested with a guaranteed rate of return, the Commonwealth shall include a similar rate of return in its calculation.

3.2 Jail Projects Financed by Method Other Than Securities Issuance: If a regional jail authority, locality or combination of localities does not issue securities but pays its obligation relating to a jail project on an out-of-pocket or pay-as-you-go basis, reimbursement installment

amounts will be calculated within the following parameters:

- (1) Pursuant to the Code, prevailing double-A coupon rates for bonds issued by the Commonwealth will be used to calculate the reimbursement installment amounts. The reimbursement installment amounts will be calculated by examining the appropriate double-A yield scale published fifteen business days prior to the date of the Reimbursement Agreement by the Delphis Hanover Corporation ("Delphis"). The relevant double-A yield scale utilized will be based upon a Delphis scale that has been adjusted to reflect the actual yields obtained for all double-A bonds of Commonwealth agencies sold within the prior year. Only the obligations of Commonwealth agencies which are staffed by the Department of the Treasury shall be utilized. Such average scale will be determined by the Treasury Board, in consultation with the Financial Advisor.
- (2) The approved portion of Capital Costs and Financing Costs will be amortized at the Treasury Board's option over a period not to exceed twenty (20) years for the purpose of calculating the reimbursement installment amounts.
- (3) Pursuant to the Code, the Commonwealth will reimburse a portion of the approved Capital Costs as determined by the Board of Corrections. The Board of Corrections may approve all or a portion of costs associated with separate portions or phases of a jail project. Different methods may be used to finance separate portions or phases of a jail project. Accordingly, only those Financing Costs associated with the financing method used to finance approved Capital Costs or portions thereof, will be utilized by the Treasury Board in calculating the reimbursement installment amounts.

3.3 Modification of Reimbursement Installment Amounts: The Treasury Board may elect to modify the reimbursement installment amounts, as permitted under the Reimbursement Agreement, within the following parameters:

- (1) If a regional jail authority, locality or combination of localities refunds, defeases, or redeems all or a portion of the securities issued to finance its obligation relating to a jail project, the Treasury Board may recalculate the reimbursement installment amounts such that the revised reimbursement installment amounts reflect the Commonwealth's proportional share of the annual net present value debt service savings achieved.
- (2) If upon completion of construction of the jail project, or at any other time, the Board of Corrections increases or decreases the approved reimbursement amount, as defined in the Reimbursement Agreement, or if the regional jail authority, locality or combination of localities receives financial assistance for Capital Costs of the jail project from the Department of Criminal Justice Services or from other public fund sources outside the provisions of Code § 53.1-80 et seq., the Treasury Board may recalculate the reimbursement installment amounts based upon the revised amount, if any, of approved Capital Costs and pursuant to the methods discussed in Sections 3.1 and 3.2 of these Guidelines. In the event that the Treasury Board, or the VPBA acting on its behalf, has

prepaid its reimbursement installment amounts pursuant to Section 3.3(3) hereof, the Treasury Board may recalculate the amount of the prepayment to be refunded to the Treasury Board or the VPBA pursuant to the methods discussed in Sections 3.1, 3.2 and 3.3 of these Guidelines.

- (3) The Treasury Board may elect to prepay its amortized reimbursement installment amounts in advance. In this event, and subject to appropriation by the General Assembly or issuance of bonds by the VPBA for the repayment of all or a portion of one or more Reimbursement Agreements, the Treasury Board or the VPBA will deliver to the trustee, or other third party fiduciary, an amount sufficient to pay; (i) the principal components set forth in the Reimbursement Agreement; (ii) the interest components set forth in the Reimbursement Agreement through the first call date of the securities; and (iii) the redemption premium, if any, not to exceed 2% of the remaining principal to be redeemed. Such amounts shall only be used to pay debt service on the securities, as long as any are outstanding, subject to the limitations described below. If no securities are outstanding, such amounts may be used for any lawful purpose. In the event that the Treasury Board, or the VPBA acting on its behalf, prepays its amortized reimbursement installment amounts in advance, and such prepayment occurs prior to completion of construction of the jail project and determination of the final approved reimbursement amount, the prepayment amount delivered pursuant to this section may not be used to legally defease (but shall be used to economically defease) the applicable securities until the Board of Corrections has determined the final approved reimbursement amount. In the event the final approved reimbursement amount is less than the preliminary reimbursement amount used to determine the reimbursement installment amounts set forth in the Reimbursement Agreement, the Treasury Board may recalculate pursuant to Section 3.3(2) hereof the amount of the prepayment to be refunded by the locality, authority or combination of localities prior to legally defeasing the applicable securities. Notwithstanding the above, a locality, authority or combination of localities may use the prepayment amount to legally defease the applicable securities before the Board of Corrections has determined the final approved reimbursement amount if, in the sole discretion of the Treasury Board, satisfactory arrangements have been made to repay any refund due upon calculation thereof.
- (4) In the event the Treasury Board has prepaid its reimbursement installment amounts pursuant to the Reimbursement Agreement and the regional jail authority, locality or combination of localities subsequently refunds, defeases or redeems all or a portion of its obligations prior to the first call date on the applicable securities, or receives financial assistance for Capital Costs of the jail project from the Department of Criminal Justice Services or from other public fund sources outside the provisions of Code § 53.1-80 et seq., the regional jail authority, locality or combination of localities shall refund to the Treasury Board, acting as an agent of the Commonwealth, the Commonwealth's proportional share of the annual present value debt service savings or annual financial assistance payment received. Such amount shall be calculated by the Treasury Board, based upon the revised amount of approved Capital Costs pursuant to the methods discussed in Sections 3.1 and 3.2 of these Guidelines.
- (5) In the event a regional jail authority, locality or combination of localities sells the Project

after obtaining the consent and approval of the Treasury Board and the Department of Corrections, and regardless of whether the Treasury Board has prepaid its reimbursement installment amounts pursuant to the Reimbursement Agreement, the regional jail authority, locality or combination of localities shall refund to the Treasury Board, acting as an agent of the Commonwealth, a portion of the sale proceeds. Such amount shall be calculated by the Treasury Board, and shall be based upon the percentage of approved Capital Costs reimbursed by the Commonwealth and the ratio of approved Capital Costs to total actual project costs.

The Treasury Board shall notify the regional jail authority, locality or combination of localities of the proposed revised reimbursement installment amounts prior to approval by the Treasury Board. The Treasury Board shall provide the regional jail authority, locality or combination of localities with a schedule of the revised reimbursement installment amounts within seven (7) business days after Treasury Board approval.

PART IV - STANDARDS FOR REIMBURSEMENT

4.1 The Reimbursement Agreement: If a regional jail authority is established to finance and construct a jail facility, the Treasury Board shall negotiate a Reimbursement Agreement, the form of which is attached as Appendix B, with such authority. If no such authority is established, the Treasury Board shall enter into a Reimbursement Agreement, the form of which is attached as Appendix C, with a single locality, or any combination of localities as appropriate, acting on behalf of their respective localities, as designated in a written agreement by and among all localities involved in such jail project.

4.2 Reimbursement Payments: Reimbursement installment amounts paid pursuant to a Reimbursement Agreement shall be contingent upon the respective locality's or authority's payment of its periodic scheduled debt service requirement on securities issued to finance the jail facility or satisfaction of its periodic scheduled payment obligation pursuant to a contractual agreement related to such financing. This provision will not apply to localities or authorities eligible for reimbursement pursuant to Section 3.2 above.

The schedule and requirements for reimbursement installment amount payments will be set forth in the respective Reimbursement Agreement. The Treasury Board will make every effort to develop a mutually agreeable schedule with the applicable localities or authority.

4.3 Reimbursement Agreements with Single Locality or Managing Locality Acting on Behalf of Other Localities: If a regional jail authority is not established to finance and construct a jail facility, and the Treasury Board enters into a Reimbursement Agreement, the form of which is attached as Appendix C, with a single locality, or any combination of localities as appropriate, acting on behalf of their respective localities, as designated in a written agreement by and among all localities involved in such jail project, the Treasury Board reserves the right to adjust such terms and conditions in the Reimbursement Agreement as necessary to conform such Reimbursement Agreement to the terms and conditions set forth in the contractual

agreement by and among the localities participating in the jail project.

Such Reimbursement Agreement must satisfy the requirements of Section 4.2 of these Guidelines and must instruct and request the Treasury Board and the Commonwealth as to whether reimbursement installment amounts are paid to each locality, a locality acting on behalf of all other participating localities (the "Managing Locality"), or any combination thereof. In the event the participating localities request that reimbursement installment amounts be paid to a Managing Locality, trustee, or other third party fiduciary, the Reimbursement Agreement will be adjusted to conform to the terms of the contractual agreement by and among participating localities. Such adjustments may be made at the sole discretion of the Treasury Board in consultation with the Special Counsel and Financial Advisor.

- 4.4 Method of Reimbursement:** Reimbursement installment amounts paid pursuant to a Reimbursement Agreement shall be paid by check or wire transfer as described in such Agreement.
- 4.5 Reimbursement Payments Are Subject to Appropriation:** All reimbursement installment amount payments are subject to the appropriation of sufficient funds by the General Assembly pursuant to the Code.

PART V - ADDITIONAL INFORMATION

- 5.1 Contact:** A current application form, and assistance in preparation of applications to the Governor as required by the Code of Virginia by localities, regional jail authorities or other combination of localities seeking reimbursement for a jail facility, may be requested by contacting:

Governor of Virginia
c/o Department of the Treasury
Attn: Director of Debt Management
Regional Jail Financing Program
P. O. Box 1879
Richmond, Virginia 23218-1879
(804) 225-4927
Telecopier: (804) 225-3187